

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Beryl D. Halterman,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1500
Parcel No. 070/00783-006-000

On October 11, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Petitioner-Appellant, Beryl D. Halterman, was self-represented and submitted evidence in support of the appeal. The Board of Review designated Polk County Assistant Attorney David Hibbard as its legal representative. It submitted new evidence in addition to the certified record. The Appeal Board now having examined the entire record, heard the testimony and being fully advised, finds.

Findings of Fact

Beryl D. Halterman, owner of property located at 2733 6th Avenue, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. The real estate was classified commercial for the January 1, 2009, assessment and valued at \$177,500; representing \$43,500 in land value and \$134,000 in improvement value. Halterman protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). In response to the protest the Board of Review notified Halterman the January 1, 2009, assessment would be changed, stating, "the assessed value of this property was changed because the market data did not support the assessment." The Board of Review identified five sales of comparable property with adjusted sale prices of \$43.19 to \$52.98 per square foot. After

adjustments the indicated values of the comparables were \$100,492 to \$164,221 with a median of \$158,689. Since the property is owner-occupied, the appraiser used market rents to estimate the value of \$158,866 by the income approach. The Board of Review reduced the assessment value to a total value of \$143,500; allocated \$43,500 to the land value and \$100,000 to the improvement value.

Halterman then appealed to this Board, checking on his form the ground there has been a downward change in value since the last assessment under Iowa Code sections 441.37(1) and 441.35(3). In a re-assessment year a challenge based on downward change in value is akin to a market claim. *See Dedham Co-op Ass'n. v. Carroll County Board of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we will consider the claim of over-assessment, which was pled before the Board of Review. Halterman values the property at \$100,000. He seeks \$43,500 in relief.

The subject property is a 4356 square-foot office building built in 1955. The property has a quality grade factor of 4+00 and is in normal condition. The site consists of 0.313 acres.

Halterman testified at hearing regarding the location and the physical condition of the improvements. Halterman purchased the property in 1995 following the flood of 1993 for \$100,000. At that time, Halterman was given assurance that the levee along the Des Moines River would be substantially improved. Halterman testified the flood of 2008 and the evacuation in 2009 has caused a general decrease in commercial property value in this area. Halterman claims the property is in a flood plain and the Board of Review did not dispute this fact. We note this area is referred to locally as the Birdland Park area, and as of this date, the levee has not been repaired.

Halterman stated the flood did physical damage to the property beyond reasonable repair. He stated part of the addition is tipping away from the original portion of the building. He also pointed out there is a sink hole running along the footing of the building and another sink hole in the front part of the yard. Halterman stated that as of the assessment date, not all repairs from the flood of 2008 had been completed.

Halterman stated the five sales comparables submitted by the Board of Review are not actually comparable because they are not in the subject property's area and are outside the flood zone.

Halterman believes these land values are higher than other land values near the subject property. He submitted three properties for comparison in his area with assessments ranging from \$1.60 per square foot to \$1.92 per square foot. The subject property is assessed at \$3.18 per square foot. Halterman stated that two properties listed for sale since the flood of 2008 have not sold, and one property just recently sold for 45% of the assessed value. Halterman's major concern is the assessed value of his land.

Michael Cauldfield, an appraiser from the Polk County Assessor's Office, testified on behalf of the Board of Review. Cauldfield testified that he inspected the subject property with Halterman in the spring of 2009 and just prior to this hearing. Cauldfield took photographs of the subject property. The photographs show the sinkhole in the front part of the land site. Cauldfield, however, did not inspect the sinkhole along the side of the building. It is also clear from the photographs that the east side of the building shows there is a separation of the two portions of the building. The photographs of the new boiler and new heater were taken after the assessment date.

Cauldfield testified regarding the method the assessor's office used to determine the land assessments in the subject property's area. Cauldfield testified about the base unit value per square foot that was determined in 2007 to value the properties. He also noted that he considers the property located with frontage on 6th Avenue to be much more valuable than those with frontage off New York Avenue. Cauldfield also referred to this area as an industrial area.

We are concerned that although the subject is an office-type structure, it is located in an industrial area, not an office retail neighborhood and the actual impact of its frontage on 6th Avenue is debatable in an industrial area. Thus, the major difference Cauldfield noted of the square-foot value between properties with frontage on 6th Avenue versus frontage on New York Avenue is questionable.

Also, the assessment has not been revisited in this area since the flood of 2008 and the evacuation because of flood fears in 2009. Further, we find that although these circumstances would indicate a decrease in the market value of properties located in this area, insufficient evidence exists to determine the subject property's correct value. The evidence in the record does not support Halterman's claim that the assessment is \$100,000. Therefore, we affirm the assessment of the Polk County Board of Review.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code section 441.37A(3)(a).

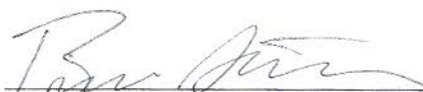
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

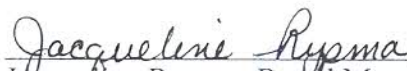
In an appeal that alleges the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

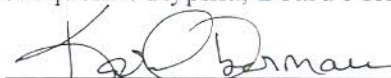
Viewing the evidence as a whole, we determine that substantial evidence is lacking to support Halterman's claim that the subject property is over-assessed as of January 1, 2009. Halterman did not provide data to support what the assessed value should be. We, therefore, affirm the Halterman property assessment as determined by the Board of Review at \$143,500; representing \$43,500 in land value and \$100,000 in improvement value as of January 1, 2009.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Halterman property located in Des Moines, Iowa, as determined by the Polk County Board of Review is affirmed.

Dated this 9 day of December, 2010.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-9</u> , 2010.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
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